IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12007 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHIBEN LAKHABHAI VANKAR & 2 - Petitioner(s)

Versus

COMPETENT AUTHORITY & ADDL COLLECTOR ULC & 1 - Respondent(s)

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Appearance :

MR MC BHATT for Petitioner(s) : 1 - 3.
MR. M.R.MENGDEY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners through their Power of Attorney holder Mohanbhai Ramdas Patel have challenged the legality and validity of the order passed

by the Competent Authority and Deputy Collector, Urban Land Ceiling, Unit-2, Vadodara dated 21.5.1988 in declaring 6024 sq. mts. of land as excess vacant land from the land bearing Survey No.888/1 situated at Gotri, Vadodara in a declaration submitted by the respondent No.3 herein under the provisions of the Gujarat Urban Land Ceiling & Regulation Act; 1976 (hereinafter referred to as “The Act”) as well as the judgment and order passed by the Urban Land Tribunal dated 10.12.1990 passed in Appeal No. Vadodra-83/90 in dismissing the said appeal.

2. The petitioners and the respondent No.3 are the sisters and brother. The land in question i.e. Land bearing Survey No.888/1 situated at Gotri, Vadodara along with the other lands were originally owned by one Koya Lala. On coming into force of the Act, the respondent No.3 submitted the declaration under Section 6(1) of the Act declaring that he is the owner of the land admeasuring 7487 sq. mts. of land bearing Survey No.888/1 situated at Gotri, Vadodara and one residential house admeasuring 37 sq. mts. There was an agricultural exemption under Section 20 of the Act, however, the said agricultural exemption under Section 20 of the Act came to be cancelled by order dated 29.8.85 and thereafter, the declaration came to be processed by the Competent

Authority and ULC, Vadodara. The respondent No.3-original declarant submitted the objections on the basis of entry in the revenue record being revenue Entry No.2819 dated 14.7.87 by which names of the petitioners were also mutated in the revenue record as co-owners. The respondent No.3 requested for four units i.e. one unit for himself and three units for the petitioners. After giving an opportunity and considering the objections raised by the respondent No.3 and considering the fact that the land bearing Survey No.888/1 was given to the declarant individually and necessary entry to that effect was also made in the year 1952 and the name of Lakhabhai Narsing as guardian of the declarant Chitabhai Lakhabhai Vankar respondent No.3 was mutated in the revenue record and that Entry No.2819 dated 14.7.87 was made after coming into force the Urban Land Ceiling Act i.e. in the year, 1987, the contention on behalf of the declarant to give four units was not accepted and granting only one unit i.e. 1500 sq. mts. of land, the Competent Authority & ULC, Vadodara by its order dated 21.5.88 declared 6024 sq. mts. of land as excess vacant land under the provisions of the Act. It appears from the record that Notification under Section 10(1) of the Act came to be issued on 8.7.88 and the same was published in the official gazette on 4.8.88. That thereafter, the

Notification under Section 10(3) of the Act came to be issued on 28.10.88 and the same was published in the official gazette on 8.12.88. It also appears from the record that the Notification under Section 10(5) of the Act came to be issued and served upon the original declarant on 31.3.89 and it is the case of the respondents-State Government that they have taken over the possession of the land in question in the presence of panchas on 17.6.89 and a further order under Section 11 of the Act with regard to the compensation came to be passed by the Competent Authority on 6.9.89.

3. Being aggrieved and dissatisfied with the order passed by the Competent Authority and Deputy Collector, ULC, Vadodara dated 21.5.88, the petitioners as daughters of Bai Hira and Lakhabhai Vankar on the basis of the Will of 1934 executed by original land owner Koya Lala grand father (Nana) of the petitioners, and on the basis of the mutation entry dated 14.7.87 by which their names were entered into revenue record as co-owners, preferred appeal under Section 33 of the Act being Appeal No. Vadodara-83/90 and the Urban Land Tribunal by its judgment and order dated 10.12.90 dismissed the said appeal confirming the order passed by the Competent Authority and Deputy Collector, ULC, Vadodara dated

21.5.88. Being aggrieved and dissatisfied with the aforesaid two orders, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri M.C.Bhatt, learned advocate appearing on behalf of the petitioners has made the following submissions :-

(A) The impugned order passed by the Competent Authority and Deputy Collector, ULC, Vadodara declaring 6024 sq. mts. of land as excess vacant land from the land bearing Survey No.888/1 is passed without giving any opportunity to the petitioners and the petitioners being daughters of Bai Hira and Lakhabhai Vankar were not heard.

(B) The appellate authority has materially erred in ignoring the Will executed by Koya Lala in the year 1934, the grand-father (Nana) of the petitioners, on the ground that the same is not registered.

(C) The appellate authority has materially erred in ignoring the mutation Entry No.2819 dated 14.7.87 by which the names of the

petitioners were entered into revenue record as co-owners and the rights of the petitioners are ignored.

(D) The land in question was an agricultural land and therefore, the Urban Land Ceiling Act was not applicable.

(E) As Will of 1934 was a registered Will, the same was not required to be proved and the appellate authority has materially erred in ignoring the same.

(F) On implementation of the Gujarat Town Planning Act, the provisions of the Urban Land Ceiling Act was not applicable.

(G) In fact, all throughout upto the year 1999, Chitabhai Lakhabhai and others are shown to be in possession of the land in question and actually the possession of the land in question has not been taken over by the Competent Authority as alleged.

5. Shri M.C.Bhatt, learned advocate appearing on behalf

of the petitioners has vehemently submitted that the land in question was originally owned by one Koya Lala, the grand-father (Nana) of the petitioners and respondent No.3, and he executed the Will in the year 1934 which was registered and according to the said Will, the property/land bearing Survey Nos.570, 888 and 889 and other constructed properties were required to be remained with him so long as he was alive and after his death, his wife Bai Vahli would become the owner and after the death of Bai Vahli, Survey No.570 will go to the share of the grand-daughter Babli and the rest of the properties will go to the share of his daughter Bai Hira (i.e. Mother of petitioners and respondent No.3). It is, therefore, submitted that the petitioners were entitled to the share as per the Will executed by the said Koya Lala as petitioners are entitled to share in the property of Bai Hira. It is submitted that the daughter of Koya Lala i.e. Bai Hira (Hiri) was married to one Lakhabhai, the father of the petitioners and respondent No.3-Chitabhai Lakhabhai, and the aforesaid land in question was given to Bai Hira pursuant to the aforesaid Will dated 26.6.34 and therefore, the petitioners as heirs of Bai Hira were entitled to the share in the land in question along with the respondent No.3-Chitabhai Lakhabhai and the impugned order has been passed by the Competent Authority without

giving an opportunity and/or serving any notice upon the petitioners as daughters of Bai Hira and Lakhabhai and therefore, the same is required to be quashed and set aside. It is also further submitted that inspite of the aforesaid fact, the Urban Land Tribunal has dismissed the appeal which also requires to be quashed and set aside and therefore, it is requested to remand the matter to the Competent Authority for deciding the declaration afresh.

6. Shri M.C.Bhatt, learned advocate appearing on behalf of the petitioners has relied upon the judgments of this Court in case of ***Babuben Haribhai v/s. Competent Authority & Deputy Collector*** reported in ***1995(2) GCD page-239*** in support of his submission that the daughters are required to be heard and that the order passed by the Competent Authority is without giving an opportunity to the daughters and without serving any notice upon them and therefore, it is bad in law. He has also relied upon the Regulation-5 of the Urban Land Regulations in support of his submission that all the interested persons are required to be served with the notice by the Competent Authority and in the present case, no notice was served upon the petitioners though they were very much interested and they have got the share in the land

pursuant to the registered Will executed by Koya Lala in the year 1934 and therefore, it is requested to quash and set aside the order passed by the Competent Authority as well as passed by the Appellate Authority and to remand the matter to the Competent Authority for deciding the same afresh. He has also further submitted that in fact, in the Village Form No.7/12 till 1999, the land in question is shown to be in possession of the family members and the actual possession of the land in question is never taken over by the Competent Authority and therefore, in view of the Repeal Act of 1999, the orders are required to be set aside.

7. Relying upon the Circular issued by the State Government dated 27.1.99, he has submitted that even the State Government has also issued the Circular clarifying that the female heir is entitled to claim separate unit and in view of the aforesaid Circular also the petitioners are entitled to claim separate units under the Urban Land Ceiling Act and therefore, he has requested either to allow the present Special Civil Application and/or to remand the matter to the Competent Authority.

8. Per contra, Shri M.R.Mengdey, learned AGP while

opposing the present Special Civil Application has submitted that the judgment and order passed by the Appellate Authority is well reasoned and therefore, it is not required to be interfered with. He has also submitted that the proceedings reached upto the Notification under Section 10(5) of the Act and thereafter, even the order with regard to the compensation came to be passed under Section 11 of the Act as far back as on 6.9.89 and the possession of the land in question is already taken over by the Competent Authority in the year 1989 and therefore, the present Special Civil Application is required to be dismissed. He has also further submitted that the respondent No.3 submitted the declaration under Section 6(1) of the Act in which, he has shown the land bearing Survey No.888/1 of his own ownership and has never disclosed that the petitioners as daughters have also share in the land in question. He has also further submitted that the petitioners have never submitted the declaration under Section 6(1) of the Act. He has also further submitted that the petitioners claim their share on the basis of the Will executed by Koya Lala in the year 1934 but the Will of 1934 was never implemented and in the revenue record no such entry was made, on the contrary, the very Koya Lala gave land bearing Survey No.888 to the respondent No.3 who was minor at the

relevant time in the year 1952 and the name of Lakhabhai Narsing as guardian of respondent No.3 was mutated in the revenue record in the year 1952 during the life time of the said Koya Lala and under the circumstances, no rights were required to be considered on the basis of the Will of 1934. He has also further submitted that so far as the reliance placed upon the mutation entry of 1987 by which the names of the petitioners were mutated in the revenue record as co-owners is concerned, the same has rightly been ignored by the Urban Land Tribunal as the same was after the Urban Land Ceiling Act came into force. It is also further submitted that in view of the Urban Land Ceiling Act being repealed in the year 1999 and the possession of the land is already taken over in the year 1989, the prayer of the petitioners to remand the matter to the Competent Authority may not be considered and the petition be dismissed.

9. Heard the learned advocates appearing on behalf of the parties.

10. The petitioners claim their right/share on the basis of the Will executed by Koya Lala in the year 1934. It is true that the Urban Land Tribunal has observed that as the Will is not registered before the Sub-Registrar, the

same cannot be considered. It is the contention on behalf of the petitioners that the Will is not required to be registered. There is no dispute with regard to the proposition of the law however, it is required to be noted that the Urban Land Tribunal has considered other points also. The said Koya Lala executed the Will in the year 1934 and on the basis of the said Will, according to the petitioners, the land bearing Survey Nos.888, 889 and other constructed properties had gone to the share of his daughter Bai Hira i.e. mother of the petitioners and the respondent No.3 herein and therefore, on the death of Bai Hira, the petitioners were having the share in the land in question. It is required to be noted and the same is even considered by the Urban Land Tribunal that part of the aforesaid three Survey Numbers i.e. Survey Nos. 570, 888 and 889 were given to one Murji Lala, the brother of Koya Lala in the year 1952 on the basis of the partition between the brothers and necessary mutation entry being Entry No.22 dated 25.10.52 was also posted and as a result of which, Survey Nos.570/2, 888/2 and 889/2 have been entered into in the name of the said Murji Lala. Not only that but vide Entry No.23 dated 25.10.52 with regard to the remaining part of the above three Survey Numbers i.e. Survey Nos.579/1, 888/1 and 889/1, the name of minor Chitabhai Lakhabhai i.e. respondent No.3 herein was

entered into the revenue record and the name of Lakhabhai Vankar the father of the respondent No.3 was mentioned in the revenue record as guardian of minor Chitabhai Lakhabhai. Thus, during the life time of Koya Lala, the aforesaid two entries were posted and the partition took place and the land bearing Survey No.888/1 was given to minor Chitabhai Lakhabhai. The Koya Lala died on 16.3.53 therefore, assuming that there was a Will executed by Koya Lala in the year 1934 however, by subsequent partition and giving land bearing Survey No.888/1 to minor Chitabhai Lakhabhai in the year, 1952, the Will of 1934 was not required to be implemented. It is also required to be noted that though Koya Lala died on 16.6.53 even there was no mutation entry on the basis of the Will of 1934 in the name of Bai Hira and/or that of Bai Vahli. The petitioners are very much relying upon the mutation Entry No.2819 by which the names of the petitioners as well as respondent No.3 are mutated in the revenue record as co-owners. It is required to be noted that the said entry posted on 14.7.87 i.e. after the Urban Land Ceiling Act came into force. Thus, from the above, it is very much clear that the petitioners had no valid claim and/or share in the land in question merely on the basis of the aforesaid entry No.2819 which is mutated in the year 1987 i.e. after the Urban Land

Ceiling Act came into force and therefore, the petitioners cannot have any share and/or title in the land in question. It is, therefore, rightly observed by the Urban Land Tribunal that the aforesaid entry might be with a view to defeat the purpose of the Act.

11. One another things is also required to be considered that in the declaration submitted by the respondent No.3 Chitabhai Lakhabhai, wherein he has mentioned that he is the absolute owner of the land bearing Survey No.888/1 and in the declaration, he has nowhere shown or submitted that the petitioners have also the share in the land in question. It is also required to be noted that the petitioners never submitted any declaration under Section 6(1) of the Act.

12. The contention on behalf of the petitioners that as the petitioners being the daughters, have the share in the land in question and/or interest in the land in question and they were required to be heard and as the impugned order has been passed without serving any notice upon them, the matter is required to be remanded. However, it is required to be noted that the proceedings reached upto Section 11 of the Act i.e. determining of the compensation in the year 1989 and the possession of

the land in question is already taken over by the Competent Authority in the year 1989 and as of course the same is disputed by the petitioners but the said disputed fact cannot be considered in the petition under Articles 226 and 227 of the Constitution of India. The fact remains with the Notification under Section 10(5) of the Act came to be issued in the year 1989 and even order under Section 11 of the Act came to be passed on 6.9.89. Considering the provisions of the Urban Land Ceiling Act, the order with regard to the compensation is the final conclusion of the proceedings and only after taking over the possession the said order is required to be passed. It is also required to be noted that the Urban Land Ceiling Act of the year 1976 is repealed in the year 1999 and in view of the aforesaid facts, the matter is not required to be remanded and therefore, this Court has itself considered alleged rights of the petitioners on the basis of the Will of 1934 instead of remanding the matter and considering the aforesaid facts and more particularly, the reasoning given by the Urban Land Tribunal, which is discussed herein above, and the revenue entries of the year 1952, the petitioners were not having any interest and/or share in the land in question as the land bearing Survey No.888/1 was given to Chitabhai Lakhabhai in the year 1952 by Koya Lala during

his life time. Under the circumstances, without considering the larger question with regard to whether the petitioners were required to be heard or not, this Court considered the matter on merits and is of the opinion that even if the opportunity would have been given, in the aforesaid facts and circumstances of the case, the order passed by the Competent Authority as well as Urban Land Tribunal are neither illegal nor contrary to the provisions of the Act and they are not required to be interfered with by this Court exercising powers under Articles 226 and 227 of the Constitution of India. So far as the contention with regard to the Town Planning Act being implemented is concerned, no such submission was made before the Urban Land Tribunal and therefore, the same cannot be permitted to be made in a petition under Articles 226 and 227 of the Constitution of India for the first time. So far as the submission on behalf of the petitioners that the land was an agricultural land and therefore, Urban Land Ceiling Act was not applicable is concerned, the same has also no substance as in fact, there was an agricultural exemption under Section 20 of the Act obtained by the respondent No.3-Chitabhai Lakhabhai-original declarant and the same was cancelled subsequently and the proceedings were initiated thereafter.

13. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith.

(M.R.SHAH, J.)

kdc.